IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN

TIMOTHY BORDERS et al.,

Petitioners,

v.

No. 05-2-00027-3

KING COUNTY et al.,

Respondents,

and

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WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE,

OBJECTIONS, ANSWERS, AND RESPONSES TO WASHINGTON STATE DEMOCRATIC CENTRAL COMMMITTEE'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PETITIONER EDWARD MONAGHAN

Intervenor-Respondent.

Petitioner Edward Monaghan ("Petitioner") provides the following objections, answers, and responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production.

GENERAL OBJECTIONS

1. Petitioner objects to Instruction No. 3 with regard to the instruction to "state all factual and legal justifications" supporting any objection or failure to answer as seeking to impose obligations beyond those required by the Civil Rules and as seeking work product. Petitioner will set forth its objections in compliance with the Civil Rules.

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- 2. Petitioner objects to Instruction No. 4 as seeking to impose obligations beyond those required under the Civil Rules and as burdensome, harassing, and calling for information protected by the attorney client privilege or work product doctrine.
- 3. Petitioner objects to Instruction No. 5 as seeking to impose obligations beyond those of the Civil Rules. Petitioner will answer and object to interrogatories in accordance with the Civil Rules.
- 4. Petitioner objects to Instruction No. 6 as unduly burdensome, overbroad, harassing, and to the extent that it would require disclosure of documents or information protected by the attorney-client privilege or work product doctrine.
- Petitioner objects to the definitions of "You,' 'your' or any similar word or 5. phrase," "Petitioners," "identify," and "state the factual basis" including each of the multiple subparts of those definitions, as unreasonable, unduly burdensome, and harassing. Petitioner will entertain reasonable requests for further identifying information if there is genuine uncertainty as to the person, entity, or communication to which the discovery responses refer. Furthermore, the inclusion of all of Petitioner's agents, attorneys, and professional advisors or consultants in the definitions is objectionable insofar as it would require disclosure of documents or information protected by the attorney-client privilege or as work product. Petitioner has received assistance from many in-house and outside attorneys and consultants, both retained and volunteer, throughout this election and in the course of post-election litigation continues to receive assistance from such people. The communications with them are either (1) protected by the attorney-client privileged, (2) prepared in anticipation of or in the course of litigation, or (3) wholly unrelated to any of the issues in this litigation. Petitioner has not asked these individuals to provide responsive documents and is not producing correspondence with these individuals that is in its possession. Petitioner further objects to providing a privilege log for such documents, as the log would amount to a running report of the timing and subject matter of all of its

communications with its attorneys and consultants. Further, given the enormous burden of producing such documents or even identifying them and preparing a privilege log and the lack of any relevance of the actual communications themselves to the subject matter of this case (as opposed to the factual information and documents that are being provided with these answers and responses), the request for these documents is unduly burdensome.

Petitioner offers to schedule a CR 26(i) conference to discuss this objection and the request further and ways to accommodate any specific, legitimate needs to discover some of the nonprivileged communications.

- 6. Petitioner objects to the definitions and instructions generally to the extent that they seek to impose obligations beyond those imposed by the Civil Rules. Petitioner will provide answers and responses consistent with the obligations imposed by the Civil Rules.
- 7. Petitioner objects to the disclosure or production of his confidential information or documents.
- 8. Petitioner objects to the production of, and will not produce, copies of the papers and pleadings on file in this action or of the communications between his attorneys and the WSDCC's attorneys. The WSDCC already has copies of such documents.
- 9. Petitioner notes that the WSDCC and some counties opposed Petitioners' efforts to obtain expedited discovery. Petitioners' discovery efforts continue and are ongoing. Much of the information sought herein currently is being obtained from other parties through discovery. Thus, these answers and responses will be supplemented as required under CR 26(e).
- 10. The requests for a list of illegal votes that will be the subject of this election contest appear to be premature, as the timing of the disclosure of this information is governed by RCW 29A.68.100. In an effort to expedite the discovery process, however, Petitioner is willing to discuss and agree to a mutual exchange of such lists, to the extent

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the parties possess the information, in advance of the statutory deadline. In any event, the final list of illegal votes that will be the subject of this election contest shall be produced in accordance with RCW 29A.68.100.

INTERROGATORIES

INTERROGATORY NO. 1: Identify any Challenge you made to any person's right to vote in the 2004 General Election or Gubernatorial Election on or before Election Day.

ANSWER: Petitioner did not make any such challenges.

INTERROGATORY NO. 2: For any Challenge identified in response to Interrogatory No. 1, identify the person whose right to vote you Challenged.

ANSWER: See Answer to Interrogatory No. 1.

INTERROGATORY NO. 3: Identify any Personal Knowledge you have of any felon having voted in the 2004 General Election, if any, and identify the following:

- a. The felon:
- The date that the county in which the felon voted learned of the b. felon's conviction;
- Any facts indicating whether the felon has had his or her rights C. restored and, if they have been, the date the rights were restored;
- What steps you took, if any, to determine if the person's rights had d. been restored;
- Any facts indicating that the felon voted in the Gubernatorial Election; and
- f. Any facts indicating which candidate the felon voted for in the Gubernatorial Election.

ANSWER: See General Objection No. 5. Without waiving this objection, Petitioner has no such "Personal Knowledge" but refers to and incorporates the Answer to Interrogatory No. 3 in the Objections, Answers, and Responses to the Washington State OBJECTIONS, ANSWERS, AND RESPONSES TO Davis Wright Tremaine LLP

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Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign.

INTERROGATORY NO. 4: Identify any communications you have had with any felon identified in response to Interrogatory No. 3.

ANSWER: Petitioner is not aware of any such communications.

INTERROGATORY NO. 5: Identify any Personal Knowledge you have of any vote having been cast in the name of a deceased person in the 2004 General Election, if any, and identify the following:

- The deceased person:
- The date of death of the deceased person;
- The date that the county in which the deceased person was C. registered learned of the deceased person's death;
- The person who voted in the name of the deceased person; d.
- Any facts indicating that a vote was cast in the name of the deceased e. person in the Gubernatorial Election; and
- Any facts indicating the candidate for which such a vote was cast in f. the Gubernatorial Election.

ANSWER: See General Objection No. 5. Without waiving this objection, Petitioner has no such "Personal Knowledge" but refers to and incorporates the Answer to Interrogatory No. 5 in the Objections, Answers, and Responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign.

INTERROGATORY NO. 6: Identify any communications you have had with any person who cast a vote in the name of any deceased person identified in Interrogatory No. 5.

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ANSWER: Petitioner is not aware of any such communications.

INTERROGATORY NO. 7: Do you contend that any person cast a vote in the 2004 General Election and in an election held in any other state on Election Day? If so, state the basis for that contention and identify the following:

- a. The person;
- The county or municipality in which the person was registered in b. any other state:
- The date on which the county in Washington that issued a ballot to c. the person learned of the person's registration in any other state.
- Any facts indicating that the person voted in the Gubernatorial d. Election: and
- Any facts indicating which candidate the person voted for in the e. Gubernatorial Election.

ANSWER: See the Answer to Interrogatory No. 7 in the Objections, Answers, and Responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign.

INTERROGATORY NO. 8: Identify any communications you have had with any person identified in response to Interrogatory No. 7.

ANSWER: Petitioner is not aware of any such communications.

INTERROGATORY NO. 9: Do you contend that any person cast more than one vote in the 2004 General Election? If so, state the basis for that contention and identify the following:

- The person: a.
- The date that the county in which the person voted learned that the b. person cast more than one vote:

- c. Any facts indicating that the person voted in the Gubernatorial Election; and
- d. Any facts indicating which candidate the person voted for in the Gubernatorial Election.

ANSWER: See the Answer to Interrogatory No. 9 in the Objections, Answers, and Responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign.

INTERROGATORY NO. 10: Identify any communications you have had with any person identified in response to Interrogatory No. 9.

ANSWER: Petitioner is not aware of any such communications.

INTERROGATORY NO. 11: Do you contend that any member of any Precinct Election Board engaged in misconduct in relation to the 2004 General Election or Gubernatorial Election? If so, state the basis for that contention, identify each such Precinct Election Board member, and identify any Personal Knowledge you have regarding such alleged misconduct, if any.

ANSWER: See General Objection No. 5. Without waiving this objection,
Petitioner has no such "Personal Knowledge" but refers to and incorporates the Answer to
Interrogatory No. 11 in the Objections, Answers, and Responses to the Washington State
Democratic Central Committee's First Interrogatories and Requests for Production to the
Rossi for Governor Campaign.

INTERROGATORY NO. 12: Do you contend that Illegal Votes were cast in the 2004 General Election? If so, state the basis for that contention and identify the following:

- a. The person casting the Illegal Vote;
- b. The date that the county in which the person voted learned of the Illegal Vote;

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- c. Any facts indicating that the person voted in the Gubernatorial Election;
- d. Any facts indicating which candidate the person voted for in the Gubernatorial Election; and
- e. The precinct in which you contend the Illegal Vote was cast.

ANSWER: See the Answer to Interrogatory No. 12 in the Objections, Answers, and Responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign.

In addition, in fall 2004, Petitioner and his wife went to the Lewis County Auditor to pick up their absentee ballots because they had not yet received their ballots in the mail. The Lewis County Auditor informed Petitioner that someone had already cast absentee ballots in his name and the name of his wife. At that time, neither Petitioner nor his wife had cast absentee ballots for the 2004 general election.

INTERROGATORY NO. 13: Identify any communications you have had with any person identified in response to Interrogatory No. 12 or any person about the Illegal Votes identified in response to Interrogatory No. 12.

ANSWER: Petitioners object to this Interrogatory in that the term "any person" is overbroad and may seek privileged or work product information. Without waiving this objection, Petitioner is not aware of any communications with any person who cast an illegal vote.

INTERROGATORY NO. 14: For each Illegal Vote identified in response to Interrogatory No. 12, please identify any Personal Knowledge you have regarding whether the Illegal Vote was cast in favor of Governor Christine Gregoire or in favor of Dino Rossi.

ANSWER: See General Objection No. 5. Subject to this objection, Petitioner has no such "Personal Knowledge."

INTERROGATORY NO. 15: Identify any Personal Knowledge you have regarding whether any Washington county failed to issue absentee ballots to Military Voters pursuant to the time limits imposed by Washington law, if any.

ANSWER: See General Objection No. 5. Subject to this objection, Petitioner has no such "Personal Knowledge" but refers to and incorporates the Answer to Interrogatory No. 15 in the Objections, Answers, and Responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign.

INTERROGATORY NO. 16: Identify by day all locations where you were at between November 2, 2004 and December 23, 2004 where you conducted any activity related to the 2004 General Election or Gubernatorial Election.

ANSWER: Petitioner objects to this interrogatory as vague, overbroad and seeking information that is beyond the permissible scope of discovery and not reasonably calculated to lead to the discovery of admissible evidence. Where Petitioner was between November 2, 2004 and December 23, 2004 has no tendency to make any fact at issue in this action more or less likely. However, Petitioner agrees to meet and confer with WSDCC to further resolve this issue if necessary. Also, if WSDCC narrows its request or provides further detail regarding the type of information it is seeking, Petitioner will supplement these responses as contemplated by the Civil Rules.

INTERROGATORY NO. 17: Identify any Personal Knowledge you have of whether during the 2004 General Election any Provisional Ballots were placed directly into

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a ballot box, ballot machine, or other ballot storage or counting device prior to verification of whether those ballots should be counted?

ANSWER: See General Objection No. 5. Subject to this objection, Petitioner has no such "Personal Knowledge."

INTERROGATORY NO. 18: Do you contend that during the 2004 General Election Provisional Ballots were placed directly into a ballot box, ballot machine, or other ballot storage or counting device prior to verification of whether those ballots should be counted? If so, state the basis for that contention and identify the following:

- a. The precinct or polling location at which this occurred;
- b. All persons with Personal Knowledge of this occurring;
- c. Any facts indicating that the Provisional Ballots included a vote in the Gubernatorial Election;
- d. Any facts indicating the candidate for whom the vote was cast in the Gubernatorial Election; and
- e. Any facts indicating whether the person who cast the ballot was entitled to vote regardless of whether the ballot was verified.

ANSWER: See the Answer to Interrogatory No. 16 in the Objections, Answers, and Responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign.

INTERROGATORY NO. 19: Identify any communications you have had with the Building Industry Association of Washington.

ANSWER: Petitioner objects that this interrogatory is overbroad, does not contain subject or date restrictions, and seeks information beyond the permissible scope of

discovery. Without waiving the objections, Petitioner does not recall any communications with the Building and Industry Association of Washington.

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REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce all documents you intend to rely on in support of this Election Contest.

RESPONSE: See the Response to Request for Production No. 1 in the Objections, Answers, and Responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign. Petitioner is not aware of any additional responsive documents in Petitioner's possession, custody, or control.

REQUEST FOR PRODUCTION NO.2: Produce all documents described in, identified in response to, or relied on or referred to in answering, Interrogatories No. 1-19.

RESPONSE: See the Response to Request for Production No. 2 in the Objections, Answers, and Responses to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign. Petitioner is not aware of any additional responsive documents in Petitioner's possession, custody, or control.

REQUEST FOR PRODUCTION NO.3: Produce all documents referring or relating to the 2004 General Election or Gubernatorial Election that you have sent to or received from the Building Industry Association of Washington, the Washington State Republican Party, Re-vote.org, the Republican Governor's Association, the Republican National Committee, the Rossi for Governor Campaign, or any person affiliated with those organizations.

RESPONSE: Petitioner objects to this request as seeking documents protected by the attorney-client privilege or work-product doctrine and as overbroad and seeking

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campaign materials such as fundraising requests or generic campaign literature that

Petitioner may have received. Subject to these objections, Petitioner refers to the
documents being produced in response to the Washington State Democratic Central

Committee's First Interrogatories and Requests for Production to the Rossi for Governor

Campaign. Petitioner is not aware of any additional responsive, non-protected documents
in Petitioner's possession, custody, or control.

documents beyond the permissible scope of discovery. Petitioner is not producing any

REQUEST FOR PRODUCTION NO. 4: Produce all documents reflecting, referring or relating to communications you have had regarding the 2004 General Election or Gubernatorial Election with the Secretary of State, Attorney General, Building Industry Association of Washington, the Washington State Republican Party, Re-vote.org, the Republican Governor's Association, the Rossi for Governor Campaign, the Republican National Committee, or any person affiliated with those organizations.

RESPONSE: Petitioner objects to this request as seeking documents protected by the attorney-client privilege or work-product doctrine and as overbroad and seeking documents beyond the permissible scope of discovery. Petitioner is not producing any campaign materials such as fundraising requests or generic campaign literature that Petitioner may have received. Subject to theses objections, Petitioner refers to the documents being produced in response to the Washington State Democratic Central Committee's First Interrogatories and Requests for Production to the Rossi for Governor Campaign. Petitioner is not aware of any additional responsive, non-protected documents in Petitioner's possession, custody, or control.

Objections dated this 22 day of February, 2005.

Davis Wright Tremaine LLP Attorneys for Petitioners

Harry J.F. Korrell, WSBA #23173 Robert J. Maguire, WSBA #29909

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VERIFICATION

STATE OF WASHINGTON)
 COUNTY OF) ss
I, one of the petitioners in this case,
certify that, to the best of my knowledge, information, and belief formed after a reasonable
inquiry, the above answers to interrogatories are complete and correct as of the time they
are made.
Name
SUBSCRIBED AND AFFIRMED to before me this day of,
2002.
NOTARY PUBLIC in and for the State of Washington, residing at
My appointment expires
Print Name

OBJECTIONS, ANSWERS, AND RESPONSES TO WSDCC'S 1ST ROGS & RFPS TO PETITIONER EDWARD MONAGHAN - 15

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